

Law Department

UNION PACIFIC RAILROAD COMPANY



1416 DODGE STREET
ROOM 830
OMAHA, NEBRASKA 68179-0001
FAX (402) 271-5610

November 24, 2003

VIA UPS OVERNIGHT DELIVERY

FEE RECEIVED

NOV 25 2003

Hon. Vernon A. Williams
Secretary
Surface Transportation Board
1925 K Street, N.W.
Washington, D.C. 20423-0001

**SURFACE
TRANSPORTATION BOARD**

**Re: Finance Docket No. 34439; Union Pacific Railroad Company
and Stillwater Central Railroad Company -- Exemption --
Joint Relocation Project -- Fort Sill Military Reservation, Oklahoma**

Dear Mr. Williams:

Enclosed for filing in the above proceeding are the following materials:

1. An original and ten (10) copies of a Verified Notice of Exemption pursuant to the class exemption for joint relocation projects, 49 C.F.R. § 1180.2(d)(5).
2. A payment form in the amount of \$950.00 for the filing fee required by 49 C.F.R. § 1002.2(f), Part IV (40).
3. Twenty (20) unbound copies of the Exhibit 1 map.

Please indicate receipt of the enclosed materials by returning a stamped copy of this letter in the self-addressed, stamped envelope enclosed for this purpose.

FILED

NOV 25 2003

**SURFACE
TRANSPORTATION BOARD**

Very truly yours,

Robert T. Opal
General Commerce Counsel
Direct dial: 402/ 271-3072
Fax: 402/ 271-5610

ENTERED
Office of Proceedings

NOV 25 2003

Part of
Public Record

cc: (w/attachments) Craig R. Richey (SLWC)

209486

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Contains Color Images

BEFORE THE
SURFACE TRANSPORTATION BOARD

FINANCE DOCKET NO. 34439

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NOV 25 2003

SURFACE
TRANSPORTATION BOARD

UNION PACIFIC RAILROAD COMPANY
AND STILLWATER CENTRAL RAILROAD COMPANY
-- JOINT RELOCATION PROJECT EXEMPTION--
FORT SILL MILITARY RESERVATION, OKLAHOMA

FILED

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SURFACE
TRANSPORTATION BOARD

VERIFIED NOTICE OF EXEMPTION

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Public Record

STILLWATER CENTRAL
RAILROAD COMPANY

Craig R. Richey
General Counsel and Assistant Secretary
315 West 3rd Street
Pittsburgh, Kansas 66767
(620) 231-2230
(620) 231-2568 (FAX)

UNION PACIFIC RAILROAD
COMPANY

Robert T. Opal
General Commerce Counsel
1416 Dodge Street
Room 830
Omaha, Nebraska 68179
(402) 271-3072
(402) 271-5610 (FAX)

Dated: November 24, 2003
Filed: November 25, 2003

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

FINANCE DOCKET NO. 34439

**UNION PACIFIC RAILROAD COMPANY
AND STILLWATER CENTRAL RAILROAD COMPANY
-- JOINT RELOCATION PROJECT EXEMPTION--
FORT SILL MILITARY RESERVATION, OKLAHOMA**

VERIFIED NOTICE OF EXEMPTION

The Notice of Exemption is filed on behalf of Union Pacific Railroad Company ("UP") and Stillwater Central Railroad Company ("SLWC") (collectively "Carriers") pursuant to the class exemption for relocation of lines of railroad provided in 49 CFR § 1180.2(d)(5). The following information is provided as required by 49 CFR § 1180.4(g):

§ 1180.6(a)(1) Description of Proposed Transaction

The transaction covered by this notice is the relocation of certain operations of UP near the Fort Sill Military Reservation ("FSMR") to a parallel line of SLWC to permit the wye tracks providing access to FSMR to be reconstructed to accommodate larger rail cars. The reconstruction of the wye track requires removal of

the existing UP main track. Following the reconstruction, UP will access FSMR from the SLWC line. See Exhibit 1 for a map showing the project components.

§ 1180.6(a)(1)(i) Summary of the proposed transaction.

The relocation project covered by the notice consists of the following elements:

(1) SLWC will grant UP trackage rights between SLWC Milepost 624.65 and SLWC Milepost 628.0, a distance of 3.35 miles, including the right to access FSMR from the trackage rights segment. This segment is shown in green on the attached Exhibit 1 map.

(2) The UP track between UP Milepost 48.56 and UP Milepost 49.60 (shown in red on the attached Exhibit 1 map) will be abandoned and removed. The only shipper served by the track to be abandoned is FSMR, which UP will continue to serve via the trackage rights described in (1) above.¹

§ 1180.6(a)(1)(i) Name, business address and telephone number of applicant, and the name of counsel to whom questions can be addressed.

The name and business address of the applicants are:

Stillwater Central Railroad Company
315 West 3rd Street
Pittsburg, Kansas 66767

Union Pacific Railroad Company
1416 Dodge Street
Omaha, Nebraska 68179

¹ The trackage rights will require construction of short connecting tracks between the current UP line and the SLWC trackage rights segment. Since the connecting tracks will not permit either carrier to serve new territory or new shippers, STB authority is not required for their construction or operation, see Finance Docket No. 33123 Missouri Pacific R. Co. and Southern Pacific Transp. Co. – Construction and Operation Exemption – Avondale, LA (served July 11, 1997)

Questions regarding this transaction are to be addressed to the
representatives named below:

Craig R. Richey
General Counsel and
Assistant Secretary
315 West 3rd Street
Pittsburg, Kansas 66767
Tel. (620) 231-2230
Fax: (620) 231-2568

Robert T. Opal
General Commerce Counsel
1416 Dodge Street
Room 830
Omaha, Nebraska 68179
Tel. (402) 271-3072
Fax (402) 271-5610

§ 1180.6(a)(1)(ii) Consummation Date

The agreement will be consummated on or after December 2, 2003.

§ 1180.6(a)(1)(iii) Purpose of the Transaction

The purpose of the transaction is to permit the wye trackage providing access to FSMR to be reconstructed to accommodate larger rail cars. This, in turn, requires removal of the existing UP main line track and relocation of UP operations to the parallel SLWC track. The transaction will not disrupt service to any rail shippers, as UP will continue to have access to FSMR.

§ 1180.6(a)(5) States in which the Applicant Operates

The trackage which is subject to this transportation is located in the state of Oklahoma. SLWC operates in the state of Oklahoma. UP operates in the states of Arizona, Arkansas, California, Colorado, Idaho, Illinois, Indiana, Iowa, Kansas, Louisiana, Minnesota, Missouri, Montana, Nebraska, Nevada, New Mexico, Oklahoma, Oregon, Tennessee, Texas, Utah, Washington, Wisconsin and Wyoming.

§ 1180.6(a)(6) Map (Exhibit 1)

A map is provided as Exhibit 1.

§ 1180.6(a)(7)(ii) Agreement (Exhibit 2)

The agreement covering the trackage rights being granted by SLWC is attached as Exhibit 2.

§ 1180.4(g)(1)(i) Labor Protection

The applicable labor protection conditions on the trackage rights component of this transaction are those imposed in Norfolk and Western Ry. Co. -- Trackage Rights -- BN, 354 I.C.C. 605 (1978), as modified in Mendocino Coast Ry., Inc. -- Lease and Operate, 360 I.C.C. 653 (1980).

§ 1180.4(g)(3) Environmental Documentation

Environmental documentation is not required for this transaction. As provided in 49 CFR §1105.6(c)(4) and §1105.8(b)(3), the trackage rights involved in the proposed relocation do not require preparation of environmental reports and documentation. The incidental abandonment is not within the Board's jurisdiction and does not require environmental and historical reports, e.g., Denver & R.G. W.R. Co. - Joint Project - Relocation Over BN, 4 I.C.C.2d 95 at 99, Soo Line R. Co. - Joint Proj. for Reloc. - Chicago C & P. R. Co., (not printed), decided March 29, 1989, Soo Line R. Co. And BN - Joint Proj. for Relocation, (not printed) served December 12, 1988.

Respectfully submitted,

UNION PACIFIC RAILROAD COMPANY

By: 

Robert T. Opal
General Commerce Counsel
1416 Dodge Street #830
Room 830
Omaha, Nebraska 68179
(402) 271-3072
(402) 271-5610 (FAX)

STILLWATER CENTRAL RAILROAD
COMPANY

By: 

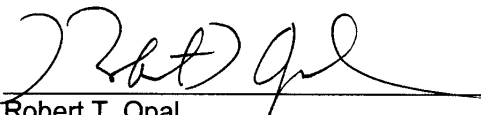
Craig R. Richey
General Counsel and Assistant
Secretary

315 West 3rd Street
Pittsburg, Kansas 66767
(620) 231-2230
(620) 231-2568 (FAX)

VERIFICATION

Robert T. Opal, General Commerce Counsel of Union Pacific Railroad Company, under penalty of perjury, declares and verifies that he has read the foregoing Notice of Exemption in Finance Docket No. 34439, knows the facts stated therein, and that said facts are true as stated.

Dated: November 24, 2003.


Robert T. Opal

[illegible]

TRACKAGE RIGHTS AGREEMENT

THIS AGREEMENT, made and entered into this 27th day of October, 2003 (the "Effective Date"), by and between STILLWATER CENTRAL RAILROAD COMPANY, a Kansas corporation, hereinafter called "SLWC" or "Owner", and UNION PACIFIC RAILROAD COMPANY, a Delaware Corporation, hereinafter called "UP" or "User".

WITNESSETH:

WHEREAS, SLWC is the owner and operator of a certain line of railroad in Oklahoma extending between Sapulpa, Oklahoma and Long, Oklahoma (the "SLWC Line"); and

WHEREAS, UP is the owner and operator of a certain line of railroad in Oklahoma extending between Chickasha, Oklahoma and Lawton, Oklahoma (the "UP Line"); and

WHEREAS, the Department of the Army desires to rearrange the wye tracks serving the military installation at Fort Sill, Oklahoma ("Fort Sill") in a manner which will necessitate UP's abandonment of approximately 3,700 feet of the UP Line; and

WHEREAS, UP is agreeable to the Department of Army's plan provided it obtains trackage rights over that portion of the SLWC Line between milepost 624.65 and milepost 628.00, a distance of approximately 3.35 miles (the "Joint Trackage"), for the purpose of serving Fort Sill and connecting with the UP Line, all as shown on the print dated October 20, 2003, marked Exhibit A, attached hereto and by this reference made a part hereof (the Joint Trackage is further defined in the General Conditions set forth in attached Exhibit B, and is depicted as between points "A" and "B" on Exhibit A); and

WHEREAS, SLWC is willing to grant UP trackage rights over the Joint Trackage, but only on the terms and conditions hereinafter set forth.

NOW, THEREFORE, it is mutually agreed by and between the parties.

Section 1. GENERAL CONDITIONS.

The General Conditions set forth in attached Exhibit B are hereby made a part of this agreement. All capitalized terms used and not defined in this Agreement shall have the meanings ascribed to them in the General Conditions. If any conflict between the

General Conditions and this agreement shall arise, the provisions of this agreement shall prevail.

Section 2. **GRANT OF TRACKAGE RIGHTS.**

Subject to the terms and conditions of this agreement, including the General Conditions, SLWC grants to UP the nonexclusive right to use the Joint Trackage for the operation, in bridge service only, of Equipment in UP's account over the Joint Trackage in common with SLWC and such other railroad company or companies as SLWC has heretofore admitted or may hereafter at any time admit to the joint use of any and all of the Joint Trackage (provided that such future admittance shall not materially hinder or obstruct the fair and reasonable exercise of the rights granted in this agreement), such other railroad company or companies to hereinafter be considered SLWC for the purpose of this agreement. It is understood and agreed that, except to 1) access and serve Fort Sill and 2) to connect to UP track at MP 625.34, UP shall not have the right to:

- (a) switch industries upon the Joint Trackage; or
- (b) set out, pick up or store Equipment upon the Joint Trackage, or any part thereof, except as necessary for handling Equipment that is bad ordered en route; or
- (c) serve any industry, team or house track now existing or hereafter located along the Joint Trackage.

The rights granted in this Section 2 shall be for rail traffic, both carload and intermodal, of all kinds and commodities.

Section 3. **MAINTENANCE AND OPERATION OF TRACKAGE.**

SLWC, at its sole cost and expense shall maintain the Joint Trackage in a manner permitting operation thereover at no less than the time table speeds in effect on the Effective Date, and shall permit UP to operate at such speeds unless a different standard is established by written mutual agreement; PROVIDED, HOWEVER, that the portion of the Joint Trackage between milepost 624.0 and milepost 628.0 shall be considered as within Yard Limits. UP will contact SLWC Dispatcher (Tel. 866-386-9321) to obtain any and all updated Bulletins. In the event that for, operating convenience, necessity or emergency, SLWC permits or directs UP to use adjacent SLWC track and track connections between or beyond the terminal of the Joint Trackage as an alternative route, then and in such event, such trackage, track connections and appurtenances shall be deemed to be part of the Joint Trackage and shall be governed by all the provisions of this agreement, including the General Conditions.

Section 4. **COMPENSATION.**

For and in consideration of the trackage rights herein granted, UP shall pay to SLWC, in addition to any other amounts elsewhere herein expressly provided, One Dollar (\$1.00) per year, the receipt and sufficiency of which is hereby acknowledged.

Section 5. **CONNECTIONS AND ADDITIONS.**

The entire cost of construction of any connection necessary for the implementation of the trackage rights granted in this agreement shall be at the expense of the Department of the Army. SLWC shall construct, own and maintain the part of any such connection on its property. UP shall construct, own and maintain the part of any such connection on its property. Any future Additions to the Joint Trackage, such as, but not limited to, sidings, CTC, grade separations, new connection, shall be handled as SLWC up-front expenditures. The cost of any future Addition made for the benefit of both parties shall be borne by each party in the proportion which the number of such party's Cars that traversed the Joint Trackage during the twelve month period immediately prior to the date work on the Addition commenced bears to the total number of Cars of both parties that traversed the Joint Trackage during the same period (in each case where the Cars of any third party railroad admitted to use the Joint Trackage are considered to be Cars of SLWC). The cost any Addition necessitated solely by the additional use of the Joint Trackage by UP shall be borne solely by UP. The cost of any future Addition solely for the benefit of SLWC shall be borne solely by SLWC.

Section 6. **LIABILITY AND INSURANCE.**

Any Liability for loss, damage, injury or death which arises from the operation under this agreement shall be assumed, settled and paid as provided by Exhibit "B", General Conditions, attached hereto. UP shall maintain insurance or self insurance as is customary under each of its risk management programs; provided that its self-insured retention is in keeping with its net worth and cash flows and is consistent with that of other North American Class One Railroads. UP shall provide to SLWC a letter evidencing such self-insurance.

Section 7. **TERM AND TERMINATION.**

Subject to the provisions of Section 7.2, 7.3 and 7.4 of the General Conditions, this agreement shall become effective upon the date UP first commences operations over the Joint Trackage pursuant to this Agreement, subsequent to having secured all necessary consent, approval or authority from appropriate governmental agencies upon terms and conditions satisfactory to UP, and continue for an initial term of ninety-nine (99) years (the "Initial Term") and indefinitely thereafter (the "Extension"); PROVIDED, HOWEVER, that (1) UP may terminate this agreement at any time during the Initial Term on one (1) year's prior written notice to SLWC, and (2) either party may terminate this agreement at the conclusion of the Initial Term or any time during the Extension on one (1) year's prior written notice to the other party.

Section 8. ASSIGNMENT.

UP shall not have the right to assign this agreement and the rights granted herein without the prior consent of SLWC, whose consent shall not be unreasonably withheld.

Section 9: NOTICES.

All notices, demands, requests, submissions and other communications which are required or permitted to be given pursuant to this Agreement shall be given by either party to the other in writing and shall be deemed properly served if delivered by hand, or mailed by overnight courier or by registered or certified mail, return receipt requested, with postage prepaid, to such other party at the address listed below:


If intended for Owner:
General Manager
Stillwater Central Railroad
409 East 9th Street
Stillwater, OK 74074

If intended for User:
Director Joint Facilities
Room 1206
1416 Dodge Street
Omaha, Nebraska 68179

Notice of address change may be given any time pursuant to the provisions of this Section 9.

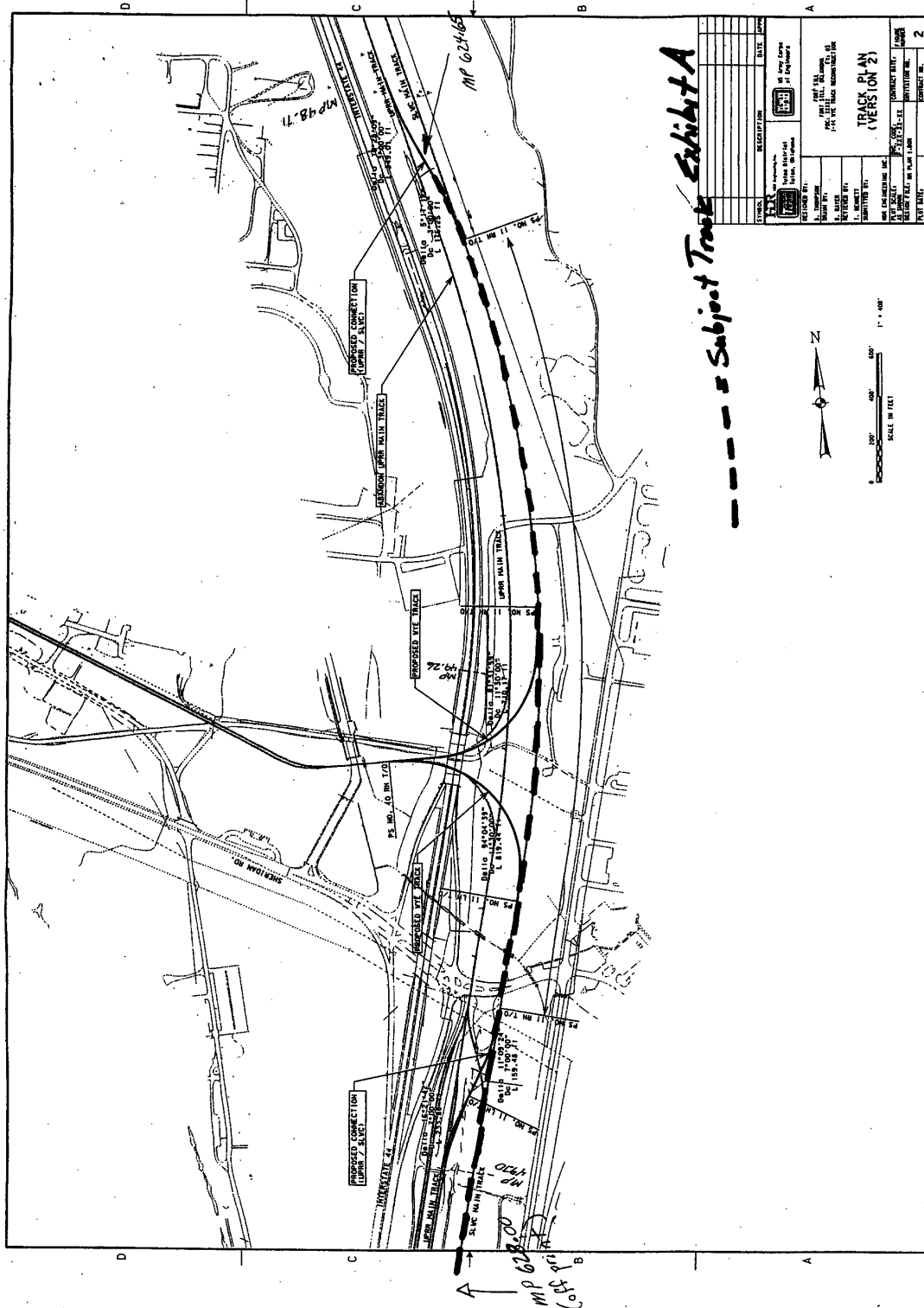
IN WITNESS WHEREOF, the parties hereto have executed this agreement in duplicate the day and year first above written.

STILLWATER CENTRAL RAILROAD COMPANY

By: 
General Counsel / Asst. Secretary

UNION PACIFIC RAILROAD COMPANY

By: 
Director Joint Facilities



--- = Subject Track Exhibit A

10/20/2003

**EXHIBIT B
GENERAL CONDITIONS**

Section 1. DEFINITIONS

1.1 "Agreement" shall mean that certain agreement dated October 27th, 2003 between Stillwater Central Railroad Company and Union Pacific Railroad Company and to which this Exhibit "B" is appended. The term "Agreement" will include this Exhibit "B"

1.2 "Cabooses Hops" shall mean one or more locomotive units coupled to one or more cabooses with no freight cars coupled.

1.3 "Car Miles" shall mean the number of miles that a Car (as such term is defined below) is operated by a party over the Joint Trackage of Owner. For the purpose of counting such Car Miles, Car Miles of any third party which Owner may admit to the use of the Joint Trackage shall be considered Car Miles of Owner. Switch engines while performing yard service, switch movements on Joint Trackage while setting out and picking up Cars at intermediate stations, business cars and hy-rail and inspection cars, Equipment engaged in work service pertaining to maintenance or operation of and Changes in and/ or Additions to the Joint Trackage shall not be counted in the calculation of Car Miles. Each passenger car, freight car, and cabooses (each, a "Car" and, collectively, the "Cars") shall be counted as one Car. Each locomotive consist, regardless of the number of locomotive units in such consist, shall be counted as four (4) Cars. Each platform in an articulated unit of two or more platforms shall be counted as one Car. Light Engines and Cabooses Hops shall be counted for Car Mile purposes.

1.4 "Car Mileage Proportion" shall mean the Car Miles operated by one party divided by the total car miles operated by all parties using the Joint Trackage, or a particular zone if the Joint Trackage is zoned, during the same time period.

1.5 "Changes in and/or Additions to" and "Additions" (including retirements) shall mean work projects, the cost of which is chargeable in whole or in part to Property Accounts as defined by Uniform System of Accounts for Railroad Companies as prescribed by the Surface Transportation Board ("STB") as of the effective date of the Agreement.

1.6 "Equipment" shall mean trains, locomotives, freight cars, cabooses, vehicles, and machinery which are capable of being operated on railroad tracks, or operated on right-of-way for the purpose of the maintenance or repair thereof.

1.7 "Joint Trackage" shall mean trackage of Owner as described in the Agreement including necessary right-of-way and appurtenances and support facilities thereof, and all Changes in and/or Additions to (as that term is hereinafter defined), thereto now or in the future located as are required or desirable for the operation of the trains of the parties

hereto.

1.8 "Light Engines" shall mean one or more locomotive units not coupled to Cars.

1.9 "Owner" shall mean the party granting the right to use the Joint Trackage (as that term is hereinafter defined).

1.10 "Property Accounts" shall mean accounts so designated under the Uniform System of Accounts for Railroad Companies prescribed by the Surface Transportation Board, (hereinafter called "STB"), or any replacement of such system prescribed by the applicable federal regulatory agency and used by the parties hereto.

1.11 "User" shall mean the party granted by the Agreement the right to use the Joint Trackage. Where more than one party is granted by the Agreement the right to use the Joint Trackage, User shall mean those parties collectively.

Section 2. MAINTENANCE CHANGES IN AND/OR ADDITIONS, OPERATION AND CONTROL

2.1 User shall construct, maintain, repair, and renew, at its sole cost and expense, and shall own such portions of the tracks which connect the respective lines of the parties at the termini of the Joint Trackage as are located on the right-of-way of User and to the clearance point in the right-of-way of Owner. Owner grants to User a license over that portion of Owner's property between the right-of-way line and clearance point in order for User to maintain such trackage. Owner shall construct, maintain, repair and renew, at the sole cost and expense of Owner, and shall own the portions of the track connections between said tracks of the parties hereto between the headblock and clearance point located on the right-of-way of Owner.

2.2 The construction, maintenance, repair, and renewal of the Joint Trackage shall be under the exclusive direction and control of Owner. Owner shall make any Changes in and/or Additions to the Joint Trackage which may be required by law, and progressively during construction these shall become part of the Joint Trackage. Owner may make any Changes in and/or Additions to the Joint Trackage which Owner deems necessary or desirable for the safe, efficient, and economical use of the Joint Trackage by the parties, and these shall progressively during construction become part of the Joint Trackage. User may request Changes in and/or Additions to the Joint Trackage which User shall deem necessary or desirable for the safe, efficient, and economical use of the Joint Trackage by the parties, and Owner shall, if it concurs, construct the same upon such terms and conditions as may be agreed upon and they shall become part of the Joint Trackage. Owner shall make no retirement, withdrawal, elimination or disposal of any part of the Joint Trackage which would permanently or materially impair the usefulness thereof to User.

2.3 The management and operation of the Joint Trackage shall be under the exclusive direction and control of Owner. Owner shall have the unrestricted power to change the management and operation of the Joint Trackage as in its judgment may be necessary, expedient, or proper for the operations thereof herein intended. Trains of the parties hereto shall be given equal dispatch, according to their class.

2.4 Owner shall employ all persons necessary to construct, operate, maintain, repair, and renew the Joint Trackage. Owner shall be bound to use only reasonable and customary care, skill, and diligence in the construction, operation, maintenance, repair, and renewal of the Joint Trackage and in managing same. The Joint Trackage shall be kept in a state of reasonable repair and reasonably suitable for the combined requirements of the parties and of such other railroad companies as Owner has heretofore admitted or may hereafter admit to use of the Joint Trackage. In the event there are conditions from time to time which require emergency slow orders with respect to any location on the main tracks comprised in the Joint Trackage, Owner shall, with reasonable promptness, repair such conditions so as to permit the removal of such emergency slow orders. Notwithstanding anything to the contrary contained in the Agreement, User shall not, by reason of Owner's performing or failing or neglecting to perform any construction, operation, maintenance, repair, renewal, or management of the Joint Trackage, have or make against Owner any claim or demand for any loss, damage, destruction, injury, or death whatsoever resulting therefrom. User shall be given the same advance notice of maintenance plans and schedules as is provided to Owner's personnel.

2.5 All officers, agents, and employees of Owner engaged in the management, operation and maintenance of the Joint Trackage shall perform their duties in a fair, impartial and just manner.

2.6 User, at its expense, shall install and maintain upon its Equipment such equipment, radios, or devices as may now or in the future be necessary or appropriate, in the reasonable judgment of Owner, for operation of trains upon the Joint Trackage. User will not, however, be required to install any equipment or devices not in use on Equipment of Owner. Owner shall consult with User prior to the adoption of new communication or signaling systems to be employed on the Joint Trackage which have not theretofore been generally adopted in the railroad industry.

2.7 If the use of the Joint Trackage shall at any time be interrupted or traffic thereon or there over be delayed for any cause, neither party shall have or make any claim against the other for loss, damage, or expense of any kind, caused by or resulting from such interruption or delay.

2.8 Owner may from time to time substitute any track or tracks for those delineated in the Agreement for use by User provided there shall at all time be afforded User a continuous route of equal utility for the operations of its Equipment within the termini of the Joint Trackage. When such tracks which are not part of the Joint Trackage are used as provided herein, the Agreement shall govern for purposes of direction and

control and liability as if all movement had been made over the Joint Trackage.

2.9 Each party shall be responsible for furnishing, at its own expense, all labor, fuel, and train supplies necessary for the operation of its own Equipment over the Joint Trackage. In the event a party hereto does furnish such labor, fuel, or train supplies to another party hereto, the party receiving same shall promptly, upon receipt of billing therefore, reimburse the party furnishing same for its reasonable costs thereof.

2.10 The operation by User on or along the Joint Trackage shall at all times be in accordance with the rules, instructions, and restrictions of Owner, but such rules, instructions, and restrictions shall be reasonable, just and fair between all parties using the Joint Trackage and shall not unjustly discriminate against any of them.

2.11 User shall be responsible for the reporting and payment of any mileage, per diem, use, or rental charges accruing on Equipment in User's account on the Joint Trackage. Except as may be specifically provided for in the Agreement, nothing herein contained is intended to change practices with respect to interchange of traffic between the parties or with other carriers on or along the Joint Trackage.

2.12 The total cost of clearing a derailment, cleaning up any Hazardous Materials released during such derailment, and/or repairing the Joint Trackage or any other property damaged thereby shall be borne by the party or parties liable therefore in accordance with Section 4 of these General Conditions.

2.13 In the event of release of Hazardous Materials (as defined in Section 4.4 below) caused by faulty equipment or third parties, cleanup will be conducted and total costs resulting there from shall be borne by the parties as stated in Sections 2.11 and 2.12 of these General Conditions.

2.14 All employees of User engaged in or connected with the operations of User on or along the Joint Trackage shall be required to pass periodic examination on the rules of Owner related to the Joint Trackage, provided, with respect to such examinations that, upon request of User, owner shall qualify one or more of User's supervisory officers on said rules and such supervisory officer or officers so qualified shall examine all employees of User engaged in or connected with User's operations on or along the Joint Trackage. Pending qualification of train and engine crews of User, Owner shall furnish a pilot or pilots, at the expense of User, as deemed necessary by owner to assist in operating trains of User over the Joint Trackage.

2.15 If any employee of User shall neglect, refuse or fail to abide by Owner's rules, instructions, and restrictions governing the operation on or along the Joint Trackage, such employee shall, upon written request of Owner, be prohibited by User from working on the Joint Trackage. If either party shall deem it necessary to hold a formal investigation to establish such neglect, refusal, or failure on the part of any employee of User, then upon such notice presented in writing, owner and User shall

promptly hold a joint investigation in which all parties concerned shall participate and bear the expense for its officers, counsel, witnesses, and employees. Notice of such investigations to employees of User shall be given by User's officers, and such investigation shall be conducted in accordance with the terms and conditions of schedule agreements between User and its employees. If, in the judgment of Owner, the result of such investigation warrants, such employee shall, upon written request of Owner, be withdrawn by User from service on the Joint Trackage, and User shall release and indemnify Owner from and against any and all claims and expenses because of such withdrawal.

If the disciplinary action is appealed by an employee of User to the National Railroad Adjustment Board or other tribunal lawfully created to adjudicate such cases, and if the decision of such board or tribunal sustains the employee's position, such employee shall not thereafter be barred from service on the Joint Trackage by reason of such occurrence.

2.16 If any Equipment of User is bad ordered enroute on the Joint Trackage and it is necessary that it be set out, such bad ordered Equipment shall, after being promptly repaired, be promptly picked up by User. Unless otherwise agreed, Owner may, upon request of User and at User's expense, furnish the required labor and material and perform light repairs to make such bad ordered Equipment safe for movement. The employees and Equipment of Owner while in any manner so engaged or while enroute to or returning to Owner's terminal from such an assignment shall be considered Sole Employees (as defined in Section 5.1 below) of User and Sole Property (as defined in Section 5.1 below) of User. However, should Owner after repairing such Equipment for User, move directly to perform service for Owner's benefit rather than return to Owner's terminal, then User's exclusive time and liability will end when owner's employees depart for work to be performed for Owner's benefit. In the case of such repairs by Owner to freight cars in User's account, billing therefore shall be in accordance with the Field and Office Manuals of the Interchange Rules adopted by the Association of American Railroads, hereinafter called "Interchange Rules", in effect at the date of performance of the repairs. Owner shall then prepare and submit billing directly to and collect from the car owner for car-owner responsibility items as determined under said Interchange Rules. Owner shall also submit billing to and collect from User any charges for repair to freight cars that are car-owner responsibility items, as determined under said Interchange Rules, should said car owner refuse or otherwise fail to make payment therefore.

2.17 If Equipment of User shall become derailed, wrecked, or otherwise disabled while upon the Joint Trackage, it shall be re-railed or cleared by Owner, except that employees of User may re-rail User's derailed Equipment on the Joint Trackage whenever use of motorized on or off track equipment is not required and prior permission has been granted by Owner. The costs and expenses of clearing derailments and wrecks shall be at User's expense unless otherwise provided for in allocation of liability in Section 5 below.

2.18 In the event Equipment of User shall be forced to stop on Joint Trackage, and such stoppage is due to insufficient hours of service remaining among User's employees, or due to mechanical failure of User's Equipment, or any other cause not resulting from an accident or derailment, and such Equipment is unable to proceed, or if a train of User fails to maintain the speed required by Owner on the Joint Trackage, or if in emergencies, crippled or otherwise defective Equipment is set out-of User's trains on the Joint Trackage, Owner shall have the option to furnish motive power or such other assistance (including but not limited to the right to re-crew User's train) as may be necessary to haul, help or push such Equipment, or to properly move the disabled Equipment off the Joint Trackage. The costs and expenses of furnishing motive power or of rendering such other assistance shall be at User's expense.

2.19 In the event any accident, derailment, or wreck, hereinafter called "derailment" involving Units on or in a train operated by User or for User by Owner carrying hazardous materials, substances, or wastes, as defined pursuant to federal or state law, hereinafter called "Hazardous Materials" shall occur on any segment of the Joint Trackage, any report required by federal, state or local authorities shall be the responsibility of User. User shall also advise the owner/shipper of the Hazardous Materials involved in the derailment, and Owner, immediately.

Unless otherwise agreed by the parties, Owner shall assume responsibility for cleaning up any release of such Hazardous Materials from User's Equipment in accordance with all federal, state, or local regulatory requirements. User may have representatives at the scene of the derailment to observe and provide information and recommendations concerning the characteristics of Hazardous Materials release and the cleanup effort. Such costs shall be borne in accordance with Section 4 below.

If Hazardous Materials must be transferred to undamaged Equipment, User shall perform the transfer, provided, however, that if the Hazardous Materials are in damaged Equipment that are blocking the Joint Trackage, Owner, at its option, may transfer the Hazardous Materials. Transfers of Hazardous Materials by User shall only be conducted after being authorized by Owner.

Section 3. BILLING DEFAULT

3.1 Billing shall be accomplished on the basis of data contained in a billing form mutually agreed to between the parties. Such billing form shall contain sufficient detail to permit computation of payments to be made hereunder. Billing shall be prepared according to the rules, additives, and equipment rental rates as published by the Owner. User shall pay to Owner at the Office of the Treasurer of Owner or at such other location as Owner may from time to time designate, all the compensation and charges of every name and nature which in and by the Agreement User is required to pay in lawful money of the United States within sixty (60) days after the rendition of bills therefore. Bills shall contain a statement of the amount due on account of the expenses incurred and

services rendered during the billing period.

3.2 Errors or disputed items in any bill shall not be deemed a valid excuse for delaying payment, and payments shall be made subject to subsequent adjustment; provided no exception to any bill shall be honored, recognized, or considered if filed after the expiration of three (3) years from the last day of the calendar month during which the bill is rendered and no bill shall be rendered later than three (3) years (i) after the last day of the calendar month in which the expense covered thereby is incurred, or (ii) if in connection with a project for which a roadway completion report is required, after the last day of the calendar month in which the roadway completion report is made covering such project, with retirements and Additions being reflected as appropriate adjustments to valuation bases retroactive up to three (3) years from date of billing, or (iii) in the case of claims disputed as to amount or liability, after the amount is settled and/or the liability(ies) established. This provision shall not limit the retroactive adjustment of billing made pursuant to exception taken to original accounting by or under authority of the STB or retroactive adjustment of wage rates and settlement of wage claims.

3.3 So much of the books, accounts, and records of each party hereto as are related to the subject matter of the Agreement shall at all reasonable times be open to inspection by the authorized representatives and agents of the parties hereto.

All books, accounts, and records shall be maintained to furnish readily full information for each item in Accordance with 49 U. S. C. Section 11161 et seq. and the related regulations of the ICC in 49 C.F.R. Part 1201, 1-3, e1 fca.

3.4 Should any amount become payable by Owner to User under the Agreement, the provisions of Section 3.1 through 3.3 of this Exhibit "B" shall apply with User as the billing party and Owner as the paying party.

3.5 Should User fail to make any payment when due which User is obligated to make under the Agreement, or fail in any other respect to perform as required under the Agreement, and such default shall continue for a period of six (6) months after notice in writing of such default is given by Owner to User, owner may at its election exclude User from the use of the Joint Trackage. Thereupon User shall surrender to Owner all said Joint Trackage and shall have no claim or demand upon it, by suit at law or otherwise, on account of said exclusion, provided that failure to make any payment which is the subject of arbitration or litigation between the parties shall not be deemed, pending the decision in such arbitration or litigation, cause of forfeiture hereunder.

Owner may waive such default subsequent, but no action of Owner in waiving any default shall affect any default of User or impair any rights of Owner resulting there from.

Section 4. COMPLIANCE WITH LAWS

4.1 User shall not treat, store or dispose of Hazardous Substances on the Joint Trackage.

4.2 Responsibility for Environmental Claims (as defined in Section 4.6, below) as between the parties shall be borne as follows:

a. User shall be responsible for Environmental Claims to the extent they result from (i) the use of, or presence upon, the Joint Trackage by User or its contractors or invitees, or (ii) the negligence or willful misconduct of User, its contractors or invitees in operations on or over the Joint Trackage.

b. Owner shall be responsible for Environmental Claims to the extent that User is not responsible for such claims pursuant to Section 4.2.a above.

4.3 EACH PARTY SHALL RELEASE THE OTHER PARTY TO THE EXTENT IT IS RESPONSIBLE FOR AN ENVIRONMENTAL CLAIM, AND, TO THE EXTENT OF SUCH RESPONSIBILITY, SHALL DEFEND, INDEMNIFY, PROTECT AND SAVE HARMLESS SUCH OTHER PARTY FROM AND AGAINST SUCH ENVIRONMENTAL CLAIM AND COSTS ASSOCIATED THEREWITH, INCLUDING, BUT NOT LIMITED TO, ENVIRONMENTAL CONSULTANT FEES, ATTORNEYS' FEES AND THIRD PARTY CLAIMS.

4.4 In the event of any incident, accident, derailment, or vehicle striking or being struck by Equipment (hereinafter "Derailment") involving Equipment operated by a party hereto carrying (i) hazardous materials, substances or wastes, as defined pursuant to Federal or State Law, or (ii) pollutants (hereinafter collectively referred to as "Hazardous Materials") shall occur on the Joint Trackage, any report required by Federal, State or local authorities shall be the responsibility of such party. Each party shall advise the other party immediately of the occurrence of a Derailment involving Equipment operated by the party carrying Hazardous Materials.

Unless otherwise agreed by the parties Owner shall undertake any Response Action (as defined in Section 4.5 below) in accordance with all Federal, State, or local regulatory requirements necessitated by a release of Hazardous Materials on Owner's right-of-way underlying the Joint Trackage from Equipment operated by either party hereto upon the occurrence of a Derailment. User shall have data or a representative available at the scene of any Derailment involving Equipment operated by it to provide information concerning the characteristics of Hazardous Materials released.

If following a Derailment upon the Joint Trackage Hazardous Materials must be transferred to undamaged Equipment or other vehicles, unless otherwise agreed by the parties, the party whose Equipment was involved in such Derailment shall perform the transfer; provided, however, that if the Hazardous Materials are in damaged Equipment

of a train of User that are blocking the Joint Trackage, Owner shall transfer the Hazardous Materials; provided further that transfers of Hazardous Materials by User shall only be conducted after being authorized by Owner.

4.5 In the event any cleanup, response, removal or remediation of any environmental condition on the Joint Trackage is necessary (collectively referred to herein as "Response Action"), neither party shall be entitled to any damages, actual or consequential, by reason of the Response Action's interference with the other party's use of the Joint Trackage. Owner and its contractors shall have full, unrestricted and unconditional access to the Joint Trackage for the purpose of completing or engaging in a Response Action for which Owner has any responsibility or, at Owner's option, a Response Action which Owner has undertaken should User fail to diligently pursue and complete to the satisfaction of Owner a Response Action for which User is responsible; provided, however, that any Response Action (a) shall be undertaken and completed pursuant to a work plan (including a schedule) submitted to the other party for its review and, in the case of Owner, approval, and (b) shall not unreasonably, in terms of duration or otherwise, restrict the other party's use of the Joint Trackage. Either party's completion of any of the other party's obligations hereunder shall not be deemed a waiver of such obligations under the Agreement. Owner shall have the right, but not the obligation, to conduct reasonable inspections of any Response Action of User and User shall provide Owner all non-privileged information reasonably requested by Owner regarding any Response Action of User or any Environmental Claims for which User is responsible.

4.6 The term "Environmental Claim" means the direct costs of any cleanup, response, removal, remediation, natural resource damage, closure and/or post-closure required by any environmental conditions affecting the air, soil, surface waters, ground waters, streams, sediments and similar environmental conditions caused by, resulting from, arising out of, or occurring in connection with this Agreement.

4.7 The liability and indemnity provisions of this Section 4 shall continue in full force and effect regardless of whether this Agreement is terminated pursuant to any other provision, or the Joint Trackage is abandoned and vacated by User.

4.8 The total cost of clearing a Derailment, cleaning up any Hazardous Materials released during such Derailment, and/or repairing the Joint Tracks or any other property damaged thereby shall be borne by the party or parties liable therefore pursuant to the allocation of liability in Section 5 below.

Section 5. LIABILITY

5.1 For the purpose of this Section 5, the following definitions shall apply:

"Loss or Damage" shall mean, without limitation, all claims, liability, cost and expense of every character (including, without limitation, amounts paid under any State

or Federal compensation law) incident to loss or destruction of or damage to property or injury to and death of persons arising from the operation by the parties on the Joint Trackage.

"Joint Employees" shall mean one or more officers, agents, employees, or contractors of Owner while actually engaged in maintaining, repairing, constructing, renewing, removing, inspecting or operating the Joint Property (as hereinafter defined) or in making Changes in and/or Additions thereto for the benefit of all of the parties hereto, or while preparing to engage in, enroute to or from, or otherwise on duty incident to performing such service. Such officers, agents, employees or contractors shall not be deemed "Joint Employees" while enroute from the performance of such work as hereinbefore described to perform service for the benefit of less than all of the parties hereto.

"Joint Property" shall mean the Joint Trackage and all Equipment while engaged in maintaining, repairing, constructing, renewing, removing, inspecting, or operating the Joint Trackage or in making Changed in and/or Additions thereto for the benefit of all the parties hereto, or while preparing to engage in, enroute to or from, or otherwise incident to performing such service. Such Equipment shall not be deemed "Joint Property" while enroute from the performance of such work as hereinbefore described to perform service for the benefit of less than all of the parties hereto.

"Sole Employees" and "Sole Property" shall mean one or more officers, agents, employees, contractors, or Equipment, while engaged in, enroute to or from, or otherwise on duty incident to performing service for the benefit of one or more, but fewer than all, of the parties hereto. Pilots furnished by Owner to assist in operating Equipment of User shall be considered the Sole Employees of User. All such officers, agents, employees, contractors, or Equipment, while engaged in, enroute to or from, or otherwise on duty incident to repairing Equipment, re-railing, or clearing wrecks or derailments or engaged in the repair or renewal of the Joint Property subsequent to any such wreck or derailment shall, for the purpose of this Section 5, be deemed the Sole Employees and/or Sole Property of the party bearing the cost of repair or of the other Loss or Damage of the wreck or derailment. Such officers, agents, employees, contractors, or Equipment while enroute from performing such repair, rerailing, or clearing of wrecks or derailments or renewing the Joint Property to perform another type of service shall not be deemed to be performing service incident to the instant repair, rerailing, or clearing of a wreck or derailment.

5.2 As between the parties hereto only, each party shall bear all cost of Loss or Damage to its Sole Employees, patrons, invitees, and others on its Equipment, or on or about the Joint Property in transaction of business for or with such party, its Sole Property, or property in its care, custody, or control, except when the Loss or Damage is contributed to by the acts or omissions, negligent or otherwise, of the Sole Employees and/or Sole Property of one or more other parties hereto, with or without the concurring

acts or omissions of Joint Employees and/or Joint Property, in which event the parties whose Sole Employees and/or Sole Property contributed to the same shall bear all of the costs of such Loss or Damage equally.

Loss or Damage to third parties, Joint Employees, or Joint Property contributed to by the acts or omissions, negligent or otherwise, of Sole Employees and/or by defects in the Sole Property of one or more of the parties hereto, with or without the concurring acts or omissions of Joint Employees and/or Joint Property, shall be borne by the party whose Sole Employees and/or Sole Property contributed to the same, or equally if more than one party's Sole Employee and/or Sole Property shall have contributed to the same. Loss or Damage to third parties, Joint Employees, or Joint Property involving only Joint Employees, Joint Property, or occurring in such a way that it cannot be determined how such Loss or Damage came about shall be apportioned among all of the parties on the basis of their respective Car Mileage Proportion during the month in which such Loss or Damage occurred, or if the month of occurrence cannot be determined, then the month in which the Loss or Damage was first discovered.

5.3 It is understood and agreed that a number of vehicular and pedestrian crossings of the Joint Trackage presently exist, or may be constructed. User agrees to accept all vehicular and pedestrian crossings in whatever condition they may be during the term of the Agreement and will not assert any claim, demand, or cause of action against Owner and will hold Owner harmless from any claim, demand, or cause of action arising out of any vehicular or pedestrian crossing accident on the Joint Trackage in which the engines, freight cars, or train of User only is involved.

5.4 For the purpose of this Section 5, Equipment of any third party railroad company or companies being detoured over the Joint Trackage and all persons other than Joint Employees engaged in moving such Equipment, shall be considered the Equipment and employees of the party hereto under whose detour agreement or other auspices such movement is being made.

Equipment, and other property being handled for or used by any party hereto shall, unless Joint Property, be considered the Sole Property of that party for purpose of this Section 5.

Each party hereto agrees that the acts and decisions of the party hereto performing any management, maintenance, repair, renewal, removal, improvement, operation, or similar function of or for the Joint Property shall be deemed acts and decisions of a Joint Employee.

5.5 Each party hereto shall have the right to settle, or cause to be settled for it, all claims for damages for which such party shall be liable under the provisions of this Section 5 and to defend or cause to be defended all suits for recovery of any such damages.'

In case a suit shall be commenced against either party hereto for or in account of damages for which the other party hereto may be solely or jointly liable under the provisions of this Section 5, the party so sued shall give notice to such other party of the tendency of such suit and thereupon such other party may assume or join in the defense of such suit.

In the event that more than one of the parties shall be liable hereunder for any damages and the same shall be settled by a voluntary payment of money or other valuable consideration by one of the parties so jointly liable therefore, release from liability shall be taken for and in the name of all parties so liable. In the event of any settlement in excess of Fifty Thousand Dollars (\$50,000), the settling party shall notify the other parties prior to settlement. Failure of the settling party to so notify the other parties prior to settlement shall not relieve the other parties of their obligation under the settlement agreement, so long as the settling party's failure to notify did not prejudice the other parties and then only to the extent of such prejudice.

If a judgment shall be recovered against and satisfied by one party involving a liability which should under the Agreement be borne entirely or participated in by the other parties, then all expenses of whatsoever nature, including costs and fees connected with such judgment and with the prosecution of the suit upon which it was based, shall be settled between the parties in strict accordance with the provisions of the Agreement and the party against which such judgment shall have been recovered shall be promptly reimbursed by such other parties to the extent to which the latter is indebted.

Section 6. ARBITRATION

6.1 If at any time a question or controversy shall arise between the parties hereto in connection with the Agreement upon which the parties cannot agree, then, upon the written request of either party setting forth the issue in dispute, such question or controversy shall be submitted to arbitration. If the parties involved in such dispute are able to agree upon a single arbitrator experienced in matters of the character in dispute within thirty (30) days after the party desiring such arbitration (the "Demanding Party") shall notify in writing the other party or parties to such dispute (the "Noticed Parties"), such dispute shall be submitted to such single arbitrator. Otherwise, the Demanding Party shall appoint an arbitrator and notify the Noticed Parties in writing of such appointment. Within twenty (20) days after receipt of said notice, the Noticed Parties shall each appoint an arbitrator and notify the Demanding Party in writing of such appointment. Should any Noticed Party fail within twenty (20) days after receipt of such notice to name its arbitrator, the arbitrator for the Demanding Party and the arbitrators for the other Noticed Parties, if any, shall select one for the Noticed Party so failing and, if they cannot agree, said arbitrator may be appointed by the Chief Judge (or acting Chief Judge) of the United States District Court for the District in which the headquarters office of the Demanding Party is located upon application by any party after ten (10) days' written notice to all other parties. The arbitrators so chosen, if an even number, shall

select one additional arbitrator; to complete the board. If they fail to agree upon an additional arbitrator, the same shall, upon application of any party, be appointed by said judge in the manner heretofore stated.

Upon selection of the arbitrator(s), said arbitrator(s) shall with reasonable diligence determine the questions as disclosed in said notice of demand for arbitration, shall give all parties reasonable notice of the time and place (of which the arbitrator(s) shall be the judge) of hearing evidence and argument, may take such evidence as they deem reasonable or as either party may submit with witnesses required to be sworn, and may hear arguments of counsel or others. If any arbitrator declines or fails to act, the party (or parties in the case of a single arbitrator) by whom he was chosen or said judge shall appoint another to act in his place. After considering all evidence, testimony, and arguments, said single arbitrator or the majority of said board of arbitrators shall promptly state such decision or award in writing which shall be final, binding, and conclusive on all parties to the arbitration when delivered to them. Until the arbitrator(s) shall issue the first decision or award upon any question submitted for arbitration, performance under the Agreement shall continue in the manner and form existing prior to the rise of such question. After delivery of said first decision or award, each party shall forthwith comply with said first decision or award immediately after receiving it.

Each party to the arbitration shall pay the compensation, costs, and expenses of the arbitrator appointed in its behalf and all fees and expenses of its own witnesses, exhibits, and counsel. The compensation, cost, and expenses of the single arbitrator or the additional arbitrator in the board of arbitrators shall be paid in equal shares by all parties to the arbitration.

6.2 The books and papers of all parties, as far as they relate to any matter submitted for arbitration, shall be open to the examination of the arbitrator(s).

Section 7. GOVERNMENTAL APPROVAL. ABANDONMENT

7.1 User shall, at its own cost and expense, initiate by appropriate application or petition and thereafter diligently prosecute proceedings for the procurement of all necessary consent, approval, or authority from any governmental agency for the sanction of the Agreement and the operations to be carried on by User thereunder. Owner, at its expense, shall assist and support said application or petition and will furnish such information and execute, deliver, and file such instrument or instruments in writing as may be necessary or appropriate to obtain such governmental consent, approval, or authority. User and Owner agree to cooperate fully to procure all such necessary consent, approval, or authority.

7.2 In the event Owner shall be involuntarily dispossessed, including threat of condemnation by competent public authority, of the right to operate upon and maintain any portion of the Joint Trackage, Owner shall have no obligation hereunder to provide tracks for User's use, and User shall have and shall make no claim of any kind, legal or

otherwise, against Owner for failure to provide such tracks for User's use.

7.3 Under the terms hereinafter stated, and to the extent that Owner may lawfully do so, owner reserves to itself the exclusive right, exercisable at any time during the life of the Agreement without concurrence of User, to elect to abandon all or any part of the Joint Trackage by giving six (6) months prior written notice to User of its intention so to do.

7.4 Upon termination of the Agreement, or any partial termination, as the applicable case may be, however the same may occur, User shall be released from any and all manner of obligations and shall be deemed to have forever relinquished, abandoned, surrendered, and renounced any and all right possessed by User to operate over that part of the Joint Trackage to which such termination applied, and as to such part, User shall forever release and discharge Owner of and from any and all manner of obligations, claims, demands, causes of action, or suits which User might have, or which might subsequently accrue to User growing out of or in any manner connected with, directly or indirectly, the contractual obligations of Owner under the Agreement, in all events; provided, however, the aforesaid relinquishment, abandonment, surrender, renunciation, release, and discharge of User shall not in any case affect any of the rights and obligations of either Owner or User which may have accrued, or liabilities accrued or otherwise, which may have arisen prior to such termination or partial termination. Upon any termination, Owner will remove from Owner's right-of-way any connecting track, and any exclusive facility of User, at User's expense with salvage to be delivered to and retained by User. Upon any partial termination of the Agreement, however the same may occur; the terms and conditions hereof shall continue and remain in full force and effect for the balance of the Joint Trackage.

7.5 Each party shall be responsible for any labor claims of, and shall, bear the cost of employee protection payable to, its own employees, and the employees of companies affiliated with it, to the extent resulting from the entry into or operation of the Agreement. However, in the event the parties agree that Owner should retain employees or provide additional employees for the sole benefit of User, the parties shall enter into a separate written agreement providing that User shall bear all cost and expense for any such retained or additional employees, including, without limitation, all cost and expense associated with labor protection payments which are made by Owner and which would not have been incurred had such retention or provision of employees for the sole benefit of User not been required.

Section 8. OTHER CONSIDERATIONS

8.1 Nothing in the Agreement contained shall limit the right of Owner to admit other companies to the use of the Joint Trackage or any part thereof on such terms and conditions as are satisfactory to Owner, provided such admittance shall not materially hinder or obstruct the fair and reasonable exercise of the rights granted in the Agreement. Such other companies presently or hereafter admitted to the use of the Joint Trackage or

any part thereof by Owner shall be considered Owner for the purpose of the Agreement. User shall have no right to admit any person, firm, or corporation to the use of the Joint Trackage.

8.2 The Agreement shall be binding upon and inure to the benefit of the parties hereto, their respective successor lessees, and assigns, but no sale, assignment, mortgage, or lease by User of any interest or right given it under the Agreement, separate and apart from a corporate merger: sale, assignment, mortgage or lease of User's railroad in its entirety, shall be valid or binding without the prior written consent of Owner, which consent will not unreasonably be withheld.

8.3 The Agreement and each and every provision hereof is for the exclusive benefit of the parties hereto and not for the benefit of any third party. Nothing herein contained shall be taken as creating or increasing any right in any third person to recover by way of damages or otherwise against any of the parties hereto.

8.4 All notices, demands, requested, or submissions which are required or permitted to be given pursuant to the Agreement shall be given by either party to the other in writing by serving the same upon the Vice President of Operations of each company.

8.5 If any covenant or provision of the Agreement not material to the right of User to use the Joint Trackage shall be adjudged void, such adjudication shall not affect the validity, obligation, or performance of any other covenant or provision which is in itself valid. No controversy concerning any covenant or provision shall delay the performance of any other covenant or provision. Should any covenant or provision of the Agreement be adjudged void, the parties will make such other arrangements as, under the advice of counsel; will effect the purposes and intent of the Agreement.

8.6 In the event there shall be any conflict between the provision of this **Exhibit "B"** and the Agreement, the provisions of the Agreement shall prevail.

8.7 All Section headings are inserted for convenience only and shall not affect any construction or interpretation of the Agreement.